

Restitution for Victims of Terrorism

Rani Hendriana

Universitas Jenderal Soedriman, Purwokerto - Indonesia
 ranihendriana27@gmail.com

Abstract- In practice indemnity for victims of criminal acts of terrorism tend to be given in the form of compensation. As a result, the perpetrators of criminal acts of terrorism often doesn't have responsibility to compensate the victims. Based on this, it is necessary to study the use of restitution for victims of criminal acts of terrorism. The methodology used is qualitative with a social legal research approach. The results show that in its implementation victims of terrorism often do not apply for restitution. There are several factors that make restitution difficult to implement. Therefore, it have to be based on victim's interest, whether the victim will apply for both restitution and compensation, or directly submit compensation. Even if the victim proposes restitution, compensation should still be a state obligation that must be given to the victim.

Keywords - Restitution, Victim, Terrorism Crime

I. INTRODUCTION

Terrorism attacks harm not only the environment and strategic-vital object of a community, but also causes suffering and damages to the victim, that is not easily vanish and forgotten . Terrorism can be interpreted as an act of violence or a threat to commit acts of violence indiscriminately resulting in damage, death, fear, uncertainty and mass despair. This action is carried out to impose the will to the party considered by the terrorist group as an opponent, so that their interests are recognized and respected [1].

In Indonesia, from January 2017 to September 2018 there were various terrorist attacks and its effects as can be seen in the table below.

TABLE 1. TERRORIST ATTACK AND ITS EFFECT (JANUARI 2017 to SEPTEMBER 2018)'

Attack	17	
Handling	333	
Impact:	a. Deceased	50
	b. Injured	68
	c. Victim of Kidnaping	1
	d. Damaged Building	6

Source: Deteksi Indonesia and *The Habibie Center* Tahun 2018

The existence of Law no Law No. 5 of 2018 on Amendments to Law No. 15 of 2003 on the establishment of Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of the Criminal Acts of Terrorism into Laws is a progressive approach in dealing with terrorism act in Indonesia. Article 35 A paragraph (1) of Law no. 5 of 2018 states that victims are the responsibility of the state, while in the previous law does not regulate this responsibility. This includes expanding the type of victim

protection, that is, not only compensation and restitution, but also medical assistance, psychosocial and psychological rehabilitation, and compensation for families in the event of death.

Even in its implementation in 2018, 22 victims of criminal acts of terrorism have finally received compensation from the state, while the rest are still in process. This not only shows the state's responsibility, but also the role of the Witness and Victim Protection Agency (LPSK) and the National Counterterrorism Agency (BNPT) in handling victims of criminal acts of terrorism.

Means to achieve compensation for victims is one of the first initiatives taken for victims of crime, first established in New Zealand (1963), and then followed by Britain (1964) and America (1965). Compensation is different from restitution, for compensation the State helps victims pay for costs incurred because of a crime, while restitution the perpetrator themselves pay to the victim [2]. In this regard, Stephen Schafer points out the difference between retribution and compensation. that compensation is more civil law in nature, comes from victims' requests and paid for by the public or the state and a form of community or state responsibility, whereas restitution is more criminal law in nature comes from criminal court decisions and paid by the convicted person and is a form of conviction (the responsibility of the offender) [3].

Restitution is a sentence decided by a judge in the form of an order to pay a sum of indemnity to the victim / victim's family, this type of sentence is an effort to provide protection to victims of crime as an integral part of human rights in the field of welfare / social security [4]. However, in practice restitution are rarely used. It seems that there are several factors that make restitution difficult to implement in handling of criminal acts of terrorism. The lack of scientific studies on restitution for victims of terrorism shows that restitution is not an appropriate option for victims and in practice indemnity for victims usually given in the form of compensation. It means that perpetrators has less and less responsibility for the victims's losses and suffering.

Based on this, it is necessary to study more on restitution for victims of criminal acts of terrorism. Not only to analyze various factors that influence the implementation of restitution, but also to find out whether or not granting restitution is possible with orientation of victim's interest.

II. RESEARCH METHOD

This research was conducted qualitatively with a social legal research approach. This research focuses on the law conceptualized as a social institution in association with other social variables. If the law is an empirical social phenomenon, it is examined as an independent variable or cause (Independent variable) which has an influence and effect on various aspects of social life [5]. Sociological or empirical legal research wants to carry out measurements of certain legislation regarding its effectiveness, then the operational definition can be taken from the legislation [6].

This research was conducted to examine the implementation of laws on restitution for victims of terrorism acts, so that they cannot be separated from operational definition that have been regulated in various regulations and non-legal factors that affect their effectiveness. The study was conducted at LPSK and BNPT. Therefore the source and type of data consists of primary data and secondary data, obtained through interviews, participating non-observation methods and literature studies.

III. FINDINGS AND DISCUSSION

Restitution is a form of repressive legal protection. This means that the protection to obtain guarantees / legal indemnity suffering / loss of people who have been victims of criminal acts. The Criminal Code (KUHP) and the Criminal Procedure Code (KUHP) use the term "indemnity". This term can be seen in Article 14 c of the Criminal Code regarding conditional discharge that the judge can set specific conditions that the convicted, in a certain time, which is shorter than the probationary period, must pay all or part of the losses incurred because of the criminal offense. While indemnity in the Criminal Procedure Code is regulated in Article 98 relating to the merger of the lawsuit for indemnity in the criminal case. Although not using the term restitution, the indemnity referred to shows the form of restitution because it is intended for perpetrators to pay.

The term restitution first used in Law No. 26 of 2000 on Courts of Human Rights, the explanation of Article 35 states that restitution is indemnity given to the victim or their family by the perpetrator or a third party, either in the form of returning property, payment of compensation for loss or suffering, or reimbursement of expenses for specific actions.

In cases of human trafficking, based on Law no. 21 of 2007 on Eradication of the crime of human trafficking, restitution is defined as payment of indemnity which is charged to the perpetrator based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or their heirs. This definition is broader, which explicitly include immaterial losses in restitution. As for the form of restitution is regulated in Article 48 which are loss of wealth or

income, suffering, costs for medical and / or psychological treatment measures, and / or other losses suffered by victims as a result of human trafficking.

Law No. 31 of 2014 on Amendments to Law No. 13 of 2006 on Protection of Witnesses and Victims also regulate restitution as indemnity given to the victim or their family by the perpetrator or a third party. Restitution comes in the form of indemnity for loss of wealth or income, indemnity caused by suffering directly related to the crime, and reimbursement of medical and / or psychological care costs. PP No. 7 of 2018 also regulates the same definition and the same form of restitution. Victims of terrorism can also apply for restitution based on this regulation.

Restitution for victims of terrorism acts has already been regulated since Law no. 15 of 2003. As for Law no. 5 of 2018 especially Article 36 explicitly states that victims of criminal acts of terrorism are entitled to get restitution. Restitution here is defined as indemnity given by the perpetrator to the victim or his heir. Based on the definition, it is not clear whether restitution covers immaterial losses and does not regulate the in what forms of restitution is given as well. In its implementation victims tends to not file for restitution. Including restitution services for victims of terrorism. This can be seen in the table below..

TABLE 2. TYPES OF PROTECTION AND ASSISTANCE SERVICES IN 2018

No	Type of Criminal Offence	Number of Services (Restitution)
1	Corruption	14
2	Human Trafficking	131
3	Torture	3
5	Sexual Harassment	40
6	PHB	0
7	Terrorism	0
8	Other Criminal Offence	19
	Total	207

Source: LPSK 2018 Annual Report

There are number of factors that make restitution difficult to implement, among others, the perpetrators of the terrorism act died during he/she committed the criminal act. In cases where the participating actor or some of the perpetrators are still alive, they usually consider considered unable financially to pay for restitution because the number of victims resulting from the incident are a lot, even for a cases where the number of victims is small but the loss suffered by each individual victims is already severe. Therefore it only logical if the state has the responsibility to help victims in the form of compensation.

The role of LPSK and BNPT as institutions with capacity in handling victims of terrorism is also more oriented to achieve compensation. This is as stated by a research informant from LPSK, that in LPSK does not provide assistance in the filing of restitution for victims of terrorism. The same thing was also revealed by a research informant from BNPT that no victim had ever file for restitution to the Public Prosecutor. He also explained that victims of terrorism are the responsibility of the state therefore; compensation must be prioritized, so in association with state responsibility of course prefer the use of compensation not restitution. Based on this, the role of LPSK and BNPT are to ensure state fulfill its responsibility in the form of compensation for victims of terrorism.

Article 36 A paragraph (3) of Law no. 5 of 2018 formulate that the Restitution can be submitted by the Victim or his heir to the investigator since the investigation stage. As for paragraph (4), formulate that the Public Prosecutor include the amount of restitution based on the amount of loss suffered by the Victim due to the Terrorism Act in the charge, whereas paragraph (5) formulate that the restitution as referred to in paragraph (4) is given and included at the same time in the court's decision. Based on these provisions, the victim submits restitution to the investigator. However, so far the orientation of law enforcers, including investigators, is more oriented to proving terrorism rather than fulfilling victims' rights. While on the other hand it does not rule out the possibility of victims not knowing the right to restitution, while investigators and the Public Prosecutor have no legal obligation to notify, socialize or direct victims to apply for restitution from the investigation stage.

According to one research informant, the fulfillment of the rights of victims of criminal acts of terrorism based on Law no. 5 of 2018 is a series of criminal procedural law, such as the determination of victims of criminal acts of terrorism by investigators or BNPT, filing for restitution or compensation starts from the investigation process which is then included in the charge of the Public Prosecutor and brought to trial to get a judge's decision. While the rights of victims are carried out by a separate body which is LPSK and not the responsibility of law enforcement officials, so law enforcement officials tend to have an opinion that this is not an obligation. It is said that there is an obligation if there is a legal flaw in the handling of a case if there is no mention of fulfilling the rights of the victim.

Polemic about restitution not only exists in cases of terrorism act but also other cases. This is inseparable from the victim's lack of knowledge for the conditions and procedures to file for restitution, so that the victim from the did not collect any evidence of material loss they have suffered, and did not file for restitution. Law No. 31 of 2014 jo. PP No. 7 of 2018, formulate that victims of terrorism can file for restitution through LPSK.

Considering that in the regulation there are no restrictions on the types of victims of criminal acts who can file for restitution through LPSK. Article 7 A paragraph (3) of Law No. 31 of 2014 formulate that to file for restitution can be done before or after a court decision, that has obtained permanent legal force through LPSK. In paragraph (4) formulate that in the event that a file for restitution is submitted before a court ruling that has obtained a permanent law, the LPSK may submit restitution request to the public prosecutor to be included in their charge. Whereas in paragraph (5) formulate that to file for restitution, which is submitted after a court decision which has obtained permanent legal force LPSK submits restitution request to the hook for approval. The same thing is regulated in PP No. 7 of 2018.

Based on the above provisions, LPSK has the capacity to file for restitution, but prioritize compensation considering it is a form of state responsibility and LPSK is nothing but a reflect of state presence. This is the right step to ensure victims receive compensation. On the other hand the determination of restitution by the court for cases that have obtained permanent legal force so far has never been done because there are no implementing regulations yet. Based on the descriptions above, the article that formulate restitution for victims of terrorism becomes infertile because it has never been implemented, so that its effectiveness cannot be measured. In this regard, one of the research informants said that previously there was a debate in which there was input from the Public Prosecutor so that restitution was submitted first and then compensation.

In connection with the above, when viewed from the perspective of compensation itself the state's responsibility is inseparable from the inability of the perpetrators to account. Law No. 31 of 2014 Jo. PP No.7 Year 2018, formulate the definition of compensation is "Compensation for losses provided by the state because the perpetrators are unable to provide full compensation which is their responsibility to the Victim". Unlike Law No. 5 of 2018 which explicitly formulate that victims are the responsibility of the state. LPSK in submitting compensation so far has used its rules, so if it is consistent with Law no. 31 of 2014 means to achieve restitution needs to be made to assess whether the offender is unable to provide full compensation which is his responsibility to the victim.

However, on the one hand the above will further burden the victim, because the process takes longer for victims to get indemnity. While on the other hand the perpetrator can avoid himself from his responsibility to pay for restitution. Article 36 A paragraph (6) of Law no. 5 of 2018, formulate that that in the event that the offender does not pay restitution, the offender is subject to a substitute imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years. This means that if the perpetrator does not pay restitution, he/she will be subjected to a substitute imprisonment, but if the

restitution has yet been achieved, the offender avoids their responsibility to compensate the victim.

Responding to the above matter, however, the state still have to provide compensation for victims, but the process is for the victim to decide. If some victims are willing to go through the process of both restitution and compensation, LPSK can provide assistance so that the process can go hand in hand or at least not too long. Therefore, this provide an opportunity for the offender to take responsibility for the victim and as an assessment, whether the perpetrator truly regrets his actions and a form of forgiveness or improvement of their relationship with the victim. Especially in the definition of compensation in Law no. 31 of 2014 formulate the offender was unable to provide "full" indemnity to the victim. However, if the victim prefers to file for compensation directly, then this will not be a problem because after all, it is for the best interests of victims of terrorism and compensation remains a state responsibility that must be given to victims.

IV. CONCLUSION

In practice, victims of terrorism act do not file for restitution, and institutions with the capacity to deal with victims of terrorism are also more oriented to achieve compensation. So that the perpetrators doesn't have the responsibility to compensate victims of terrorism act. Therefore, law enforcement officers, LPSK and BNPT need to socialize about victims' rights especially restitution. The practice ideally have to consider the best interest of the victim, whether the victim will try to file for both restitution and compensation, or directly file for compensation. It also noted that even if the victim file for restitution, compensation remains a state responsibility that must be given to the victim.

REFERENCES

- [1] M. Mustofa, "Memahami Terorisme: Suatu Perspektif Kriminologi," *J. Kriminologi Indonesia*, vol. 2, no.3, pp. 30-38, 2002.
- [2] C. Gallo & M.E. Kim , "Victim Compensation: A child of Penal Welfarism or Carceral policies," *Nordisk Tidsskrift for Kriminalvidenskab*, vol. 1, pp.54-68, 2019.
- [3] D. Arief Mansur & E.Gultom, *Urgensi Perlindungan Korban Kejahatan*. Bandung: PT.Raja Grafindo Persada, 2006
- [4] W. Iskandar, "Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia ", *Jurnal Media Hukum*, vol. 24, no. 2, pp. 105-114, 2017
- [5] Amiruddin & Z.Asikin, *Pengantar Metode Penelitian Hukum*. Jakarta : PT. Rajawali Pers, 2016.
- [6] S. Soekamto, *Pengantar Penelitian Hukum*. Jakarta : UI Press, 1981.